Filed 7/21/09 P. v. Brown CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. DERRICK D. BROWN, Defendant and Appellant.	B200927 (Los Angeles County Super. Ct. No. NA070922)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joan Comparet-Cassani, Judge. Modified and, as so modified, affirmed.

William J. Capriola, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Joseph P. Lee and Gary A. Lieberman, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Derrick D. Brown appeals from the judgment entered following a jury trial that resulted in his convictions for attempted willful, deliberate, premeditated murder and three counts of assault with a semiautomatic firearm. Brown was sentenced to a term of 46 years to life in prison.

Brown contends: (1) the trial court erred by denying his motion to suppress his post-arrest statements, which he claims were obtained in violation of *Miranda v. Arizona* (1966) 384 U.S. 436; (2) the trial court erred by admitting evidence of a gang member's prior conviction; (3) insufficient evidence supported the gang enhancement; (4) the trial court erred by allowing a gang expert to opine regarding his guilt; (5) the prosecutor committed prejudicial misconduct during closing argument; and (6) the cumulative effect of the purported errors was prejudicial. The People urge that the abstract of judgment must be amended to correct various sentencing and clerical errors. We order the abstracts corrected as requested by the People. In all other respects, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts.*

a. *The shooting.*

In May 2005, when he was 16 years old, appellant Brown was a member or affiliate of the Rolling 20's Crips street gang. David Harvey, known as "Little Dave," was an "O.G.," or "Original Gangster" in the Rolling 20's, i.e., had been a gang member for a considerable time period and had "a bit of power" in the gang. Victim Ronald Walker, who was 19 years old at the time, was a member of the Insane Crips street gang, a rival, "enemy" gang to the Rolling 20's.

Walker had known both Little Dave and Brown since elementary school. When playing youth football, Walker and Little Dave had gotten into a fight. Since then, the two had a verbal "run in" every time they had encountered each other. Approximately a week before the charged crimes, Walker had been walking up the stairs at a friend's house and encountered Brown sitting on the stairs with a girl. Brown and the girl refused to move, forcing Walker to step over them. Walker felt there was a "low key conflict" between him and Brown as a result.

On the afternoon of May 17, 2005, Walker was on his way home from work when he saw Little Dave alone in a burgundy car at the corner of 6th Street and Lime Avenue in Long Beach, near Walker's apartment. Little Dave's presence in the area was unusual. Little Dave drove off and Walker entered his residence.

Shortly thereafter, Walker went to a driveway behind his apartment complex, which served as the backyard, and began "shooting dice" with his cousin Tyrone Hawkins and Desmond Carson. Hawkins, like Brown, was a member of the Insane Crips. Carson was not a gang member.

Approximately 15 minutes after Walker had seen Little Dave in the burgundy car, Walker observed the car again. Little Dave was driving. Brown and three other persons were in the car. The vehicle passed by Walker's driveway and parked in an alley between Olive and Lime.

Walker's neighbor, who was a Rolling 20's gang member, walked to Little Dave's car and then went inside his residence. Little Dave exited his car, walked to the end of the driveway, and looked at Walker, Hawkins, and Carson. Seconds later, Brown and several other African-American males entered the backyard driveway. Without saying a word, Brown and the other men accompanying him pointed guns in the direction of Walker, Hawkins, and Carson, and began firing at them from behind a parked car.

Walker, Hawkins, and Carson ran. Carson jumped over a fence and went into his residence, as Brown ran past with a gun in his hand. Walker and Hawkins ran toward 7th Street, followed by Brown, who continued shooting. Brown said, "I'm fitting to kill you." As Walker ran across 7th Street, he passed a Long Beach transit bus. Walker was in the middle of the street at 7th and Lime when he felt bullets hit him in the foot and the buttocks. Walker saw Brown, but no one else, shooting at him on 7th Street. Hawkins assisted Walker into a nearby business. Walker was taken to the hospital in an ambulance.

John Mead was driving the Long Beach transit bus on 7th Street near Lime Avenue when he saw an African-American male running north on Lime, then west on 7th. He then saw another African-American male running after the first man. The

second man pulled a handgun from his waist area and began firing at the first male. The first man then fell to the ground. Passenger Jesus Ortega observed the same thing. Passenger Harold Johnson heard gunshots. Ortega, Johnson, and the other bus passengers ducked. At least one shot hit the bus.

Brown was found by officers at 7th and Olive Streets, where he was being detained by citizens. He was wearing a black hooded sweater and blue jeans.

b. *Brown's confession.*

Brown was interviewed by Detective Mark Cisneros later that afternoon. He admitted having shot at Walker. He had gone to where he knew Walker was hanging out, chased him, caught up to him at the corner of 7th and Lime, and shot at him with a handgun, which he "emptied." He then threw the empty gun into some grass on a nearby street. When asked if he had shot at anyone else, Brown stated he had only aimed at Walker.

Brown told Cisneros that Walker had been threatening him and had challenged him to a fight. He believed Walker was going to shoot at him, and he was "trying to get Ronald before Ronald got him." Two weeks before the shooting, Walker had threatened Brown as Brown was leaving his high school. Further, Walker had displayed a gun to Brown when they encountered each other on the apartment stairs, and told Brown he had "caught [him] slipping." Walker had declined to fight Brown in a fistfight.

When asked why the Rolling 20's were shooting at Insane Crips that day, Brown replied that the gangs "had been going back and forth" since an Insane Crip had been killed by a Rolling 20's Crip. In retaliation, an Insane Crip gang member had shot and killed the brother of a woman who was a Rolling 20's gang member. Brown claimed he was not a gang member, although he did affiliate with Rolling 20's gang members.

c. *Identification evidence.*

Walker, as well as several other eyewitnesses, identified Brown as the shooter at trial.[1]

Carson identified Brown as the shooter in a pretrial photographic lineup, and at trial.[2]

Walker's mother and Hawkins's aunt, Shirley Welch, had heard the gunshots and saw Walker and Hawkins running, followed by Brown, who was shooting at them. Welch identified Brown in a field showup.[3]

Glenn Lucas, who was standing at the corner of 7th and Lime, heard gunshots and saw two young African-American males running, with another African-American male in pursuit, shooting at them with a handgun. Glenn, who had gotten a "very good look" at the gunman, identified Brown as the shooter in a field showup. At trial, Glenn testified that he had not seen the shooter's face, and was unable to say whether Brown was, or was not, the shooter.

Daniel Chavez was sitting outside a house on Lime Avenue when he saw Brown and two other African-American males walk by. A short time later he heard gunshots. His neighbor and another young, African-American man jumped the fence and ran toward 7th Street. Chavez then saw Brown running after the men. When Brown reached

---

[1] At the preliminary hearing, Walker testified that Brown was not the shooter. At that time Brown was still a gang member, and was concerned for his and his family's safety if he testified and was labeled "a snitch." By the time of trial, Walker was no longer a member of the gang, was attending college, and was willing to risk being labeled a snitch because he felt he "need[ed] to do what is right."

[2] At trial, Carson initially testified that Brown was not the shooter, and denied knowing him. Upon further questioning he admitted telling police that "Derrick" was the shooter, admitted identifying Brown in a photographic lineup, and identified Brown as the shooter. He stated he did not want to testify against Brown because "[e]veryone makes mistakes."

[3] At trial, Welch testified she had only gotten a "vague" look at the shooter and was unable to identify Brown.

the corner, Chavez saw him raise his hand as if he was holding a gun, and then heard more gunshots. Chavez identified Brown in a pretrial six-pack photographic lineup, and at trial.

A gun found on the ground a few blocks away was determined to be the weapon used in the shooting. Based on the position of the gun's slide and the discovery of cartridges along the route where the shooting occurred, it was determined that the gun had been fired until it ran out of ammunition.

d. *Gang evidence.*

A police officer, testifying as a gang expert, testified in support of the criminal street gang enhancement.[4]

2. *Procedure.*

Trial was by jury. Brown was convicted of the willful, deliberate, and premeditated attempted murder of Walker (Pen. Code, §§ 664, 187, subd. (a)),[5] and three counts of assault with a semiautomatic firearm on Meade, Ortega, and Johnson. (§ 245, subd. (b).) The jury found true allegations that Brown personally and intentionally used and discharged a firearm during commission of the attempted murder, causing great bodily injury (§ 12022.53, subds. (b), (c), (d)); that a principal personally used a firearm (§ 12022.53, subd. (e)); and that the offense was committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(B)). Brown was acquitted of the attempted murders of Hawkins and Carson. The trial court sentenced Brown to a term of 46 years to life in prison. It imposed a restitution fine, a suspended parole restitution fine, and a court security fee. Brown appeals.

---

[4] The officer's testimony is discussed in more detail *post*.

[5] All further undesignated statutory references are to the Penal Code.

DISCUSSION

1. *There was no Miranda violation.*

a. *Additional facts.*

During trial, the court conducted an Evidence Code section 402 hearing to determine whether Brown's confession had been obtained in violation of *Miranda v. Arizona, supra,* 384 U.S. 436. At that hearing, the following evidence was adduced. On May 17, 2005, shortly after the shooting, Brown was transported to the police department and interviewed by Detective Cisneros in an interview room. A second officer was also present during the interview. The interview began at 5:50 pm. and lasted approximately 45 minutes to an hour. Brown was 16 years old, and was turning 17 in approximately one month.

Before the interview began, Cisneros was informed that Brown's parents were in the lobby. Cisneros went downstairs and told them he was going to interview Brown. Brown's mother asked Cisneros what was going on, and why Brown had been arrested. Cisneros stated that "people were just informing [him] of what had happened," and he needed to interview Brown regarding the incident. Brown's mother did not ask to be present at the interview, nor did she tell Cisneros not to interview Brown.

Cisneros informed Brown that "his parents were downstairs and if he needed them in any way, they were there" and Cisneros "would go get them." Cisneros then advised Brown of his *Miranda* rights, i.e., that he had the right to remain silent; that anything he said could and would be used against him in a court of law; that he had a right to have an attorney present with him while being questioned; and that if he could not afford an attorney, one would be appointed for him. Brown indicated he understood his rights, and signed an admonition form to that effect. Brown never requested that his parents be present during the interview, nor did he state he needed anything from them.

The trial court found no violation of *Miranda,* and ruled the confession was admissible. It reasoned that Brown had not asked for his parents to be present. He was given proper admonishments, and had voluntarily waived his rights. Further, the court noted that Brown had a history of violence and contacts with law enforcement starting

with a sustained juvenile petition for vandalism when he was 13 years old. At age 14, he had a sustained juvenile petition for assault with serious bodily injury. At age 15, he had a sustained petition for battery, and was placed in camp. In light of this evidence, the court concluded Brown was "well schooled in the procedure" and familiar with the criminal justice system.

b. *Discussion*

Relying on *In re Patrick W.* (1980) 104 Cal.App.3d 615, Brown asserts that admission of his confession violated *Miranda* because Detective Cisneros failed to tell Brown or his parents that he had the right to have his parents inside the interrogation room. This contention lacks merit.

It has long been recognized that a minor has the capacity to make a voluntary confession without the consent or presence of counsel or another responsible adult. (*People v. Lara* (1967) 67 Cal.2d 365, 383; *People v. Maestas* (1987) 194 Cal.App.3d 1499, 1508-1509.) "A minor has a Fifth Amendment privilege against self-incrimination, which precludes admission of a minor's confession obtained without the minor's voluntary, intelligent, and knowledgeable waiver of his or her constitutional rights. [Citations.] To determine whether a minor's confession is voluntary, a court must look at the totality of circumstances, including the minor's age, intelligence, education, experience, and capacity to understand the meaning and consequences of the given statement." (*People v. Lewis* (2001) 26 Cal.4th 334, 383; *Fare v. Michael C.* (1979) 442 U.S. 707, 725; *People v. Hector* (2000) 83 Cal.App.4th 228, 235.) The court should also examine whether the minor was exposed to coercion, threats, promises, trickery or intimidation. (*People v. Lewis, supra,* at p. 383.) We examine the evidence independently to determine whether a confession was voluntary, but uphold the trial court's factual findings if supported by substantial evidence. (*Id*. at p. 384.) Our state Constitution forbids exclusion of unlawfully obtained evidence unless exclusion is mandated by federal constitutional rules. (*People v. Camacho* (2000) 23 Cal.4th 824, 829-830; *People v. Hector*, *supra*, at pp. 230, 235.)

A juvenile's request to speak to his or her parent is generally construed as an indication the juvenile wishes to invoke his or her *Miranda* rights, absent evidence demanding a contrary conclusion. (*People v. Burton* (1971) 6 Cal.3d 375, 382-384; *People v. Hector, supra,* 83 Cal.App.4th at pp. 235-237 [minor's request to speak to his mother was not an invocation of his *Miranda* privileges]; *In re Aven S.* (1991) 1 Cal.App.4th 69, 76.) However, contrary to Brown's argument, there is no requirement that a juvenile be advised of his right to speak with a parent in order for a confession to be voluntary. (*People v. Maestas, supra,* 194 Cal.App.3d at p. 1509; *In re Aven S., supra,* at p. 76 ["police interviewers are not obliged to advise a juvenile suspect of a right to speak with parents or have them present during questioning"]; *In re John S.* (1988) 199 Cal.App.3d 441, 445-446 ["courts have declined to impose a requirement that police advise minors of a right to speak with parents or to have a parent present during questioning"].)

Brown's reliance on *In re Patrick W., supra,* 104 Cal.App.3d 615, is misplaced. In that case, a 13-year-old was in custody on a charge of murdering his father. *Patrick W.* held that, when the minor's grandparents were staying at a nearby motel and were available to speak to him, the police had a duty to inform the minor of his right to see them, as well as afford him the opportunity to do so before any interrogation occurred. (*Id.* at pp. 617-618; *In re John S., supra,* 199 Cal.App.3d at p. 446.) In so ruling, *Patrick W.* relied on *People v. Burton, supra,* 6 Cal.3d 375. In *Burton*¸ a minor in custody asked to speak with his father. The court found his request during interrogation was inconsistent with a willingness to discuss the case with the police at that time, and thus amounted to an invocation of his Fifth Amendment rights. (*Id.* at pp. 382-384.) *Burton* did not, however, rule that police must advise a minor that he has the right to speak to a parent, in addition to an attorney, prior to custodial interrogation. Nevertheless, the *Patrick W.* court reasoned that under the principles announced in *Burton,* "*Miranda* extends to a right to consult with parents." (*In re Patrick W., supra,* at p. 618.)

As Brown recognizes, this court rejected *Patrick W.*'s analysis in *People v. Maestas, supra,* 194 Cal.App.3d 1499. In *Maestas,* we considered and rejected a minor's contention that police are under a duty to advise a minor of his right to talk with his parents before interrogation can take place. (*Id.* at p. 1508.) We explained that *Burton* "did not establish a requirement of a parental advisement. *Burton* held that a minor's confession was unlawfully obtained after his invocation of Fifth Amendment rights by requesting to see his parents and having that request denied." (*Id.* at p. 1509.) In contrast, in *Maestas,* the minor did not request to speak to his mother until after interviewing was well underway. His request suggested, not that he wished interrogation to cease or sought advice from his mother, but that he wished to let her know what was happening. (*Ibid.*) We further concluded that the failure of police to advise appellant of his right to see his mother did not violate his rights. (*Ibid.*) We found the contrary holding in *In re Patrick W.* inconsistent with the principle that the voluntariness of a confession must be decided by reference to the totality of the circumstances. (*Id.* at p. 1510, citing *People v. Lara, supra,* 67 Cal.2d at pp. 378-379.) Since our decision in *Maestas,* other courts have likewise declined to follow *Patrick W.* (See, e.g., *In re John S., supra,* 199 Cal.App.3d at pp. 446-447 [declining to follow *Patrick W.* "because of its manifest departure from the holdings of the Supreme Court in *Lara* and *Burton*"].)

Viewing the totality of the circumstances here, it is readily apparent the trial court's ruling was correct. Brown was almost 17 years old. He had substantial experience with the police and the criminal justice system, i.e., three sustained juvenile petitions. He was advised of, and appeared to understand, his *Miranda* rights. There is no suggestion of coercion, trickery, or threats in the record. The interview was relatively brief and was held during the early evening hours. Nothing in the record indicated Brown lacked sufficient intelligence to understand the advisements given to him. (See *People v. Hector, supra,* 83 Cal.App.4th at p. 236.) Detective Cisneros spoke to Brown's parents, who did not request to be present during the interview. Furthermore, Brown was aware that his parents were present in the station, and that Cisneros would go get them if Brown needed them. Brown never made such a request. (See *In re John S., supra,* 199

Cal.App.3d at p. 446 [fact that minor knew parents were present, but did not ask to speak to them, supported finding his statements to police were voluntary].) Under these circumstances, the trial court correctly ruled that the confession was voluntary and no *Miranda* violation occurred. (See *People v. Lewis, supra,* 26 Cal.4th at p. 386; *People v. Hector, supra,* 83 Cal.App.4th at pp. 236-237.)

2. *Admission of evidence regarding David Harvey's prior conviction for attempted murder was harmless error.*

Section 186.22, subdivision (b)(1) imposes additional punishment when a defendant commits a felony for the benefit of, at the direction of, or in association with a criminal street gang. "To establish that a group is a criminal street gang within the meaning of the statute, the People must prove: (1) the group is an ongoing association of three or more persons sharing a common name, identifying sign, or symbol; (2) one of the group's primary activities is the commission of one or more statutorily enumerated criminal offenses; and (3) the group's members must engage in, or have engaged in, a pattern of criminal gang activity." (*People v. Duran* (2002) 97 Cal.App.4th 1448, 1457; *People v. Sengpadychith* (2001) 26 Cal.4th 316, 319-320; *People v. Loeun* (1997) 17 Cal.4th 1, 8; *People v. Bragg* (2008) 161 Cal.App.4th 1385, 1399-1400.)

"A 'pattern of criminal gang activity' is defined as gang members' individual or collective 'commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more' enumerated 'predicate offenses' during a statutorily defined time period. [Citations.] The predicate offenses must have been committed on separate occasions, or by two or more persons. [Citations.] The charged crime may serve as a predicate offense [citations], as can 'evidence of the offense with which the defendant is charged and proof of another offense committed on the same occasion by a fellow gang member.' [Citation.]" (*People v. Duran, supra,* 97 Cal.App.4th at p. 1457; *People v. Bragg, supra,* 161 Cal.App.4th at p. 1400; *People v. Maldonado* (2005) 134 Cal.App.4th 627, 631.)

As one of the predicate offenses, the People sought to introduce David Harvey's (Little Dave's) 2006 conviction for attempted murder. Defense counsel objected on Evidence Code section 352 grounds, arguing that the evidence was more prejudicial than probative. Counsel urged that because Little Dave was alleged to be involved in the charged crimes, jurors were likely to assume all Rolling 20's members had a propensity to commit murder. Counsel offered to stipulate to the "predicate offenses" element. The trial court nonetheless concluded the evidence was more probative than prejudicial, and allowed its admission. The People then introduced a certified docket sheet showing Harvey's 2006 conviction. The trial court gave a limiting instruction informing the jury that the evidence could be considered only for the purpose of proving that the crime was committed for the benefit of a criminal street gang.

Brown asserts that the evidence was more prejudicial than probative, and its admission violated his due process rights. The People agree that Harvey's conviction was admitted in error, but not for the reasons asserted by Brown. Instead, they correctly point out that the Harvey conviction did not qualify as a predicate offense. The charged crime occurred on May 17, 2005; the attempted murder of which Harvey was convicted occurred in September 2005, *after* the charged crime. As we have observed, "[c]rimes occurring *after* the charged offense cannot serve as predicate offenses to prove a pattern of criminal gang activity." (*People v. Duran, supra,* 97 Cal.App.4th at p. 1458.)[6]

[6] The charged crimes of attempted murder and assault with a firearm may serve as additional predicate offenses to establish the gang enhancement, so the evidence was sufficient to prove a pattern of criminal gang activity even without the Harvey conviction. (See *People v. Gardeley* (1996) 14 Cal.4th 605, 625; *People v. Bragg, supra,* 161 Cal.App.4th at p. 1401; *People v. Duran, supra,* 97 Cal.App.4th at p. 1457.) Additionally, the People presented evidence that on May 6, 2005, Rolling 20's member Azeez Momoh committed, and was later convicted of, attempted murder, assault with a firearm, threatening a witness, and false imprisonment.

We turn, therefore, to the question of whether admission of the evidence was prejudicial. "The erroneous admission of gang or other evidence requires reversal only if it is reasonably probable that appellant would have obtained a more favorable result had the evidence been excluded." (*People v. Avitia* (2005) 127 Cal.App.4th 185, 194; Evid. Code, § 353, subd. (b); *People v. Earp* (1999) 20 Cal.4th 826, 878; *People v. Leon* (2008) 161 Cal.App.4th 149, 169-170.) Here, the evidence that Brown committed the shooting was overwhelming. He was caught near the scene immediately after the shooting, confessed to police, and was identified by multiple eyewitnesses. He stated he was "fitting to kill" Walker when he shot at him. He also followed and shot at Walker at least six times, emptying his gun. Thus, the evidence he intended to kill was overwhelming.

Brown argues that the challenged evidence was nonetheless prejudicial as it related to the gang enhancement. He urges that strong evidence suggested the shooting was not gang-related, but instead was the result of Walker's previous threats against Brown and his desire to protect himself. According to Brown, evidence that "a prominent and documented gang member" involved in the charged crimes had been convicted of attempted murder strongly suggested the charged crimes were gang-related. Moreover, he posits, because the crime was the same in the prior and charged convictions, the jury was likely to presume the same intent to kill existed in both crimes.

We disagree. While Brown's arguments are not without some force, the evidence supporting the gang enhancement was strong. It was undisputed that Brown was a member or associate of the Rolling 20's gang. The shooting did not arise out of a chance, one-on-one encounter between Walker and Brown. Instead, the evidence suggested Harvey–a senior gang member with a longstanding beef with Walker–observed Walker near his home and returned with other gang members with the sole and express purpose of shooting him. Walker was a member of a rival, "enemy" gang. The Rolling 20's and the Insane Crips had been engaging in shootings of each other for a significant period when the charged offenses occurred. Given the evidence, the jury was unlikely to accept Brown's account that the shooting was unrelated to the gang, but instead was solely due to threats Walker had made to him.

Furthermore, the trial court provided a limiting instruction to jurors. We presume jurors follow the court's instructions. (*People v. Waidla* (2000) 22 Cal.4th 690, 725; *People v. Williams* (2000) 79 Cal.App.4th 1157, 1171.) Finally, we observe that the jury acquitted Brown of the attempted murders of Hawkins and Carson, suggesting that admission of the challenged evidence did not sway the jury to convict regardless of actual guilt. (Cf. *People v. Albarran* (2007) 149 Cal.App.4th 214, 224-225, 228.) In sum, given the nature of the challenged evidence and the other evidence presented at trial, we cannot conclude Brown would have obtained a more favorable result had Harvey's conviction been excluded.

3. *The evidence was sufficient to support the "primary activities" element of the criminal street gang enhancement.*

a. *Additional facts*.

City of Long Beach Detective Victor Thrash, who had been a peace officer for 19 years and a gang officer for 13 years, testified as a gang expert for the People. He had been trained in the police academy on gangs, and was a member of the California Gang Investigators Association. Since 1999, he had been a certified instructor at the academy, where he taught gang awareness. He had spent six years working patrol with a gang unit. During the course of his career, he had interviewed thousands of suspects, witnesses, and contacts who were associated with, or were members of, the Insane Crips or Rolling 20's Crips gangs. On a regular basis, he met with other Long Beach gang officers to share information regarding the "current gang culture" in Long Beach. Thrash was one of the investigating officers in the instant matter.

Through the foregoing activities, Thrash had become familiar with the Rolling 20's gang. The Rolling 20's employed a particular hand sign to indicate their gang membership, and their colors were primarily black and gold. Thrash estimated that there were approximately 400 documented Rolling 20's members at the time of trial. The Insane Crips and "pretty much most, if not all, the Mexican gangs" were rivals of the Rolling 20's. When asked, "And what are the primary activities of the Rolling 20's? [¶] [Are] there particular activities that are known to be associated with the Rolling 20's?"

Thrash replied, "Shootings, murders, narcotic sales, intimidation, fights," as well as robberies, attempted murders, and witness intimidation. At the time of the charged offense, "there were . . . shootings back and forth between" the Rolling 20's and the Insane Crips.

The prosecutor introduced into evidence court records showing that on May 6, 2005, Rolling 20's gang member Azeez Momoh committed the offenses of attempted murder, burglary, assault with a firearm, and dissuading a witness, and was subsequently convicted of those crimes.

b. *Discussion.*

Brown contends that the evidence was insufficient to support the "primary activities" element of the section 186.22 gang allegation. We disagree.

When determining whether the evidence was sufficient to sustain a criminal conviction, we review the entire record in the light most favorable to the judgment to determine " 'whether it discloses substantial evidence -- that is, evidence which is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.]" (*People v. Hillhouse* (2002) 27 Cal.4th 469, 496; *People v. Halvorsen* (2007) 42 Cal.4th 379, 419.) We presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) Reversal is not warranted unless it appears " 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

As noted *ante,* to prove a section 186.22 gang enhancement, the People must establish that that one of the group's "primary activities" is the commission of one or more specified crimes. (*People v. Gardeley, supra,* 14 Cal.4th at p. 617; *In re Alexander L.* (2007) 149 Cal.App.4th 605, 611; *People v. Vy* (2004) 122 Cal.App.4th 1209, 1222.) Brown asserts that insufficient evidence supports this element of the enhancement.

"The phrase 'primary activities,' as used in the gang statute, implies that the commission of one or more of the statutorily enumerated crimes is one of the group's 'chief' or 'principal' occupations. [Citation.]" (*People v. Sengpadychith, supra,* 26 Cal.4th at p. 323; *People v. Duran, supra,* 97 Cal.App.4th at p. 1464.) "Proof that a gang's members consistently and repeatedly have committed criminal activity listed in section 186.22, subdivision (e) is sufficient to establish the gang's primary activities. On the other hand, proof of only the occasional commission of crimes by the gang's members is insufficient." (*People v. Duran, supra,* at pp. 1464-1465; *People v. Sengpadychith, supra,* at pp. 323-324.) " '[E]vidence sufficient to show only *one* offense [enumerated under section 186.22, subdivision (e)] is not enough.' [Citations.]" (*People v. Vy, supra,* 122 Cal.App.4th at p. 1223; see also *In re Alexander L., supra,* 149 Cal.App.4th at p. 611 ["Isolated criminal conduct . . . is not enough"].)

"Past offenses, as well as the circumstances of the charged crime, have some tendency in reason to prove the group's primary activities, and thus both may be considered by the jury on the issue of the group's primary activities. [Citation.]" (*People v. Duran, supra,* 97 Cal.App.4th at p. 1465; *People v. Sengpadychith, supra,* 26 Cal.4th at p. 323.) It is settled that the primary activities element may be established through expert testimony. (*People v. Vy, supra,* 122 Cal.App.4th at p. 1226; *People v. Duran, supra,* at p. 1465; *People v. Augborne* (2002) 104 Cal.App.4th 362, 372.) "The testimony of a gang expert, founded on his or her conversations with gang members, personal investigation of crimes committed by gang members, and information obtained from colleagues in his or her own and other law enforcement agencies, may be sufficient to prove a gang's primary activities." (*People v. Duran, supra,* at p. 1465; *People v. Sengpadychith, supra,* at p. 324.)

Brown argues that Detective Thrash's testimony was insufficient to establish the "primary activities" prong because Thrash "provided neither specific facts nor the basis for his conclusions that the Rolling 20's gang was primarily involved" in an enumerated crime. In particular, Brown argues that Thrash never testified to how many Rolling 20's members had ever been arrested or convicted of any of the enumerated crimes, and never

testified to "any specific and reliable facts" from which the jury could conclude the Rolling 20's gang "*consistently and repeatedly* engaged in any of the enumerated offenses." Brown also complains that Thrash failed to testify regarding the specific sources of his opinions, or explain how he knew the enumerated offenses were the primary activities of the gang. (See *People v. Gardeley*, *supra*, 14 Cal.4th at p. 618 [" 'Like a house built on sand, the expert's opinion is no better than the facts on which it is based' "].) Instead, in Brown's view, Thrash simply provided a laundry list of offenses.

We conclude the evidence was sufficient. Several authorities inform our analysis. In *People v. Gardeley, supra*, 14 Cal.4th 605, a police gang expert was asked for his opinion "as to the primary purpose or activity of the Family Crip gang. [The expert] responded that based on investigations of hundreds of gang-related offenses, conversations with defendants and other Family Crip members, as well as information from fellow officers and various law enforcement agencies, it was his opinion that the Family Crip gang's primary purpose was to sell narcotics, but that the gang also engaged in witness intimidation and other acts of violence to further its drug-dealing activities." (*Id*. at p. 612.) *Gardeley* concluded that "this testimony by [the police expert] provided a basis from which the jury could reasonably find" that the primary activities element was met. (*Id.* at p. 620; *People v. Sengpadychith, supra,* 26 Cal.4th at p. 324.)

In *People v. Duran, supra*, 97 Cal.App.4th 1448, a gang expert testified that the gang's primary activity was " 'putting fear into the community' " by committing the statutorily enumerated crimes of robbery, assault with a deadly weapon, and narcotics sales. (*Id.* at p. 1465.) We concluded sufficient evidence supported the jury's true finding on the gang enhancement. The expert's testimony was based in part upon his personal experience in the field gathering gang intelligence, contacting gang members, and investigating gang-related crimes. (*Ibid.*) His testimony that gang members engaged in these activities " 'often,' indeed often enough to obtain 'control' of the narcotics trade in a certain area of Los Angeles," supported a jury finding that the gang members were engaged in more than the occasional commission of the specified crimes. (*Ibid*.) Further,

evidence of the charged robbery and one of the predicate convictions committed by another gang member provided specific examples of the gang members' commission of robbery and narcotics offenses. (*Id.* at pp. 1465-1466; see also *People v. Vy*, *supra*, 122 Cal.App.4th at pp. 1225-1226 [evidence of three violent crimes committed by gang members during the three months preceding the charged crime was sufficient to support the primary activities element].)

In *People v. Martinez* (2008) 158 Cal.App.4th 1324, the evidence was sufficient to establish a criminal street gang enhancement where the expert testified that the gang's primary activities included robbery, assault, theft, and vandalism. The expert had spent the majority of his 14 years in law enforcement dealing with gangs, and had worked for the preceding eight years in the territory of the defendant's gang, the King Kobras. Further, the expert testified about two predicate robberies committed in 2002 and 2003. (*Id*. at p. 1330.) On appeal, the court concluded the evidence was sufficient. The gang expert "had both training and experience as a gang expert. He specifically testified as to King Kobras's primary activity. His eight years dealing with the gang, including investigations and personal conversations with members, and reviews of reports suffices to establish the foundation for his testimony." (*Ibid*.)

As in the foregoing cases, the evidence was here sufficient to establish the primary activities element of the charged gang enhancement. Detective Thrash had been assigned to the gang enforcement section for 13 years. For over half that period, he had worked in investigations. For the first half of his career in the gang enforcement section, he was "out in the field where [he] was in constant contact with gang members." He had, in the course of investigating gang cases, spoken to thousands of suspects, witnesses, and gang members. Through these contacts, he had become familiar with the Rolling 20's. He had significant training on gangs. In addition, he regularly met with other gang officers to share information regarding the local gang culture. Contrary to Brown's argument, this evidence established a sufficient foundation for Thrash's opinion. (*People v. Gardeley*, *supra*, 14 Cal.4th at p. 620 [expert based his opinion on conversations he had with the defendant and fellow gang members, on his personal investigation of hundreds of crimes

committed by gang members, and information from law enforcement colleagues]; *People v. Sengpadychith, supra,* 26 Cal.4th at p. 324; *People v. Martinez, supra,* 158 Cal.App.4th at p. 1330.)

Further, Thrash was directly asked, "what are the primary activities of the Rolling 20's?" and expressly answered, "Shootings, murders, narcotic sales, intimidation, fights," as well as robberies and attempted murder. Murder, robbery, assault with a deadly weapon, witness intimidation, and narcotic sales, or attempted commission of those crimes, are all activities enumerated in the gang statute. (See § 186.22, subd. (e)(1), (2), (3), (4), & (8).) The evidence adduced at trial established far more than occasional or isolated commission of assaults with a deadly weapon and attempted murder. Thrash testified that at the time of the charged offense, "there were . . . shootings back and forth between" the Rolling 20's and the Insane Crips. Detective Cisneros testified that when he asked Brown why the Rolling 20's had shot at the Insane Crips, Brown told him that the Rolling 20's and Insane Crips had been "going back and forth. And it all started about a year and a half ago" when an Insane Crip gang member was killed by a Rolling 20's gang member. Cisneros also referenced a retaliatory shooting in which an Insane Crip gang member had shot and killed the brother of a woman who was a Rolling 20's gang member. The jury was further presented with specific instances of an assault with a firearm and attempted murder by Momoh, as well as evidence of the specific assaults and attempted murder at issue in the charged crimes. The offenses committed by Momoh occurred less than two weeks before the charged offenses. In short, the evidence showed multiple, consistent, repeated shootings committed by the Rolling 20's over a considerable period of time. Contrary to Brown's argument, we do not believe, based on the authorities cited *ante,* that it was necessary for Thrash to provide detailed statistics regarding precisely how many Rolling 20's members had been arrested for the enumerated offenses. (See *People v. Sengpadychith, supra,* 26 Cal.4th at pp. 323-324.)

In re Alexander L., supra, 149 Cal.App.4th 605, cited by Brown, does not compel a different conclusion. In *Alexander,* the defendant was alleged to have committed vandalism based on his "tagging" activities. In support of the charged gang

enhancement, an expert testified that graffiti generally benefited a gang and that the defendant's gang was "an active street gang" as of the date of the defendant's arrest. When asked about the gang's primary activities, the expert testified, " 'I know they've committed quite a few assaults with a deadly weapon, several assaults. I know they've been involved in murders. [¶] I know they've been involved with auto thefts, auto/vehicle burglaries, felony graffiti, narcotic violations.' No further questions were asked about the gang's primary activities on direct or redirect examination." (*Id*. at p. 611.) "No specifics were elicited as to the circumstances of these crimes, or where, when, or how [the expert] had obtained the information. [The expert] did not directly testify that criminal activities constituted [the gang's] primary activities." (*Id*. at pp. 611-612.) Moreover, *Alexander* concluded the expert's testimony lacked sufficient foundation. (*Id.* at p. 612.) The basis for his knowledge of the gang's primary activities was never elicited. (*Ibid.*)

Here, in contrast to *Alexander*, the foundation for Thrash's opinion was clearly established, i.e., his experience in the field, his discussions with colleagues, and his training. Furthermore, unlike in *Alexander*, Thrash expressly testified that the Rolling 20's primary activities included murder, shootings, and assault with a deadly weapon, among other things. (See *People v. Martinez, supra*, 158 Cal.App.4th at p. 1330; *People v. Margarejo* (2008) 162 Cal.App.4th 102, 106-108.) The evidence was sufficient.

4. *The gang expert did not impermissibly opine regarding appellant's guilt.*

a. *Additional facts.*

During direct examination of Detective Thrash, the prosecutor asked, based on Thrash's training and experience, "For what purpose would one gang member from one gang shoot at a rival gang member . . . ?" Thrash answered, "My training and experience, a gang member would shoot a rival or at a rival gang member *with the intent on killing him.*" (Italics added.) Defense counsel objected. The trial court responded, "I'm going to sustain it unless you want to come to side bar." In a sidebar discussion, the trial court and defense counsel agreed that the detective could not testify to "the defendant's intent" or "what someone is thinking." The prosecutor agreed to stay away from this topic.

The prosecutor resumed examination, eventually eliciting testimony that a gang member's stature could rise within the gang if he demonstrated "loyalty" by committing violent acts. The prosecutor followed up, "Is there some benefit to a gang member if they eliminate a rival gang member? [¶] By eliminate, I mean kill." Thrash responded, "Yes. [¶] Again, the individual would . . . be known as a shooter, you know, or a killer. And that would benefit him by rising above those that maybe have been affiliated with the gang for a longer period of time but haven't done such a major criminal act. [¶] And again, we talk about the fear and intimidation factor of those that are within his gang, rival gang, and the community."

The prosecutor later queried, "[B]ased on your training and experience in the areas of gangs and the information that you are familiar with in this case, did you form an opinion of whether or not you believe the acts of Derrick Brown on May 17th, 2005 were committed for the benefit of the Rolling 20's gang?" Thrash responded affirmatively. The prosecutor asked what Thrash's opinion was based upon. Defense counsel's objection to the question was overruled. Thrash answered, "Based on my becoming aware of the fact that the victim[s' statements], that they saw Little Dave driving down the street by himself the first time, there was a second citing of Little Dave driving the same car, this time with multiple occupants followed up by the individual, David Harvey, passing by the area where the victims were kicking it, and then the defendant and other members going where the victims were and opening fire on them combined with the victims being from a rival gang."

Subsequently, the following exchange transpired:

"[Prosecutor]: And if a gang member has a particular problem with the rival gang member instead of–a particular situation in a particular heated relationship?

"[Thrash]: Okay.

"[Prosecutor]: By taking action against that rival gang member and shooting, even though there's a personal animosity between the two gang actions, is an action of force, an action of violence taken against a rival gang member by the person who would be in the fight have the bad relationship also be for the benefit of the gang?"

"[Thrash]: I understand what you said. It would be hard to separate the two.

"[Prosecutor]: Let me rephrase that. [¶] If somebody disrespects a gang member, by disrespecting one gang member, are they in essence disrespecting the entire gang?

"[Thrash]: Yes. In that –

"[Prosecutor]: In the gang culture, you disrespect me, you disrespect all my gangs? [¶] Is that fair?

"[Thrash]: That's correct.

"[Prosecutor]: So if an individual gang member is disrespected and takes action against an individual who has conveyed that disrespect or something similar by eliminating that person, would that benefit the entire gang?

"[Thrash]: Yes."

b. *Discussion.*

Brown urges that the aforementioned testimony "crossed the line between permissible gang expert testimony and impermissible testimony which removes critical elements from the jury's consideration." He contends that, "when [Thrash] unequivocally concluded that appellant harbored the intent to kill and undertook his actions in order to benefit the Rolling 20's gang, he effectively directed a verdict" against Brown. We are unpersuaded.

A trial court has wide discretion to admit or exclude expert testimony, and we may not interfere with exercise of that discretion absent abuse. (*People v. Garcia* (2007) 153 Cal.App.4th 1499, 1512; *People v. Valdez* (1997) 58 Cal.App.4th 494, 506.) It has long been held that, where a gang enhancement is alleged, expert testimony regarding the culture, habits, and psychology of gangs is permissible, because these subjects are sufficiently beyond common experience that expert opinion would assist the trier of fact. (*People v. Gonzalez* (2006) 38 Cal.4th 932, 944; *People v. Garcia, supra,* at pp. 1512-1513; *People v. Valdez, supra,* at p. 506.) "For example, an expert may properly testify about the size, composition, or existence of a gang; 'motivation for a particular crime, generally retaliation or intimidation'; and 'whether and how a crime was committed to benefit or promote a gang.' " (*People v. Garcia, supra,* at p. 1512, citing *People v.*

Killebrew (2002) 103 Cal.App.4th 644, 656-658; *People v. Gonzalez* (2005) 126 Cal.App.4th 1539, 1550; *People v. Valdez, supra,* at pp. 507–509 [holding that expert opinion regarding whether the defendant acted for the benefit of a gang was admissible].) Moreover, an expert's testimony is not objectionable merely because it embraces the ultimate issues to be decided by the trier of fact. (Evid. Code, § 805; *People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 77 [opinion testimony often goes to the ultimate issue in the case]; *People v. Killebrew, supra,* 103 Cal.App.4th at p. 651; *People v. Valdez, supra,* at p. 507.) An expert may not, however, testify that an individual had specific knowledge or possessed a specific intent. (*People v. Garcia, supra,* at p. 1513; *People v. Killebrew, supra,* at p. 658.)

When testifying that a gang member would shoot at a rival gang member with the intent to kill, Thrash did not opine that Brown had the intent to kill; instead, he testified to the behavior of gang members generally. Assuming arguendo that this testimony improperly touched on the subject of intent, Brown's claim fails because no prejudice is apparent. The erroneous admission of gang or other evidence requires reversal only if it is reasonably probable that appellant would have obtained a more favorable result had the evidence been excluded. (Evid. Code, § 353, subd. (b); *People v. Earp, supra,* 20 Cal.4th at p. 878; *People v. Avitia, supra,* 127 Cal.App.4th at p. 194.) As we have observed, there was strong evidence Brown intended to kill when he shot at Walker. Not only did he chase after Walker, firing multiple shots and emptying his gun, he admitted to a detective that he aimed at Walker and was "trying to get [Walker] before [Walker] got him." Given this evidence, Thrash's far more general statement that gang members shoot at rival gang members with the intent to kill could not have affected the verdict.

Brown also cites Thrash's testimony that that a gang member gains stature within his gang by killing a rival gang member. This testimony was unobjectionable. Thrash testified about gang behavior and culture generally, not about a specific individual's subjective intent or knowledge. (See *People v. Gonzalez, supra,* 38 Cal.4th at p. 946.) Similar expert testimony has repeatedly been found admissible. (See *People v. Gardeley, supra,* 14 Cal.4th at p. 619; *People v. Zepeda* (2001) 87 Cal.App.4th 1183, 1208-1209

[gang expert testified that a gang member who asks where a person is from, and then shoots him, bolsters his reputation within the gang].) Indeed, " '[i]t is difficult to imagine a clearer need for expert explication than that presented by a subculture in which this type of mindless retaliation promotes "respect." ' [Citations.]" (*People v. Gonzalez, supra,* at p. 945.)

Brown next challenges Thrash's testimony that if an individual gang member is "disrespected" by someone and retaliates, the retaliation benefits the entire gang because, in the gang culture, disrespect of one gang member is attributable to the entire gang. Again, this testimony was unobjectionable. It pertained to gang culture and behavior generally, and was addressed to an aspect of gang culture that would be beyond the ken of most jurors. Thrash did not testify to the hypothetical gang member's intent or mental state. (See *People v. Gonzalez, supra,* 38 Cal.4th at pp. 946-947.) Instead, his testimony focused on " 'what gangs and gang members typically expect,' " not on the defendant's subjective expectations. (*Id.* at p. 947.)

Finally, Brown challenges Thrash's testimony that, in his opinion, the shooting was committed for the benefit of the Rolling 20's gang. As we have noted, the testimony of gang experts regarding the motivation for a particular crime, and whether and how a crime was committed to benefit or promote a gang, has repeatedly been held admissible. (See *People v. Gardeley*, *supra*, 14 Cal. 4th at pp. 612-613 [expert, given facts of the case in a hypothetical, testified the incident would be gang-related activity]; *People v. Garcia, supra,* 153 Cal.App.4th at pp. 1512-1514 [expert's testimony that defendant's possession of a firearm was for the benefit of the gang was proper, even though it encompassed the ultimate issue in the case]; *People v. Killebrew, supra,* 103 Cal.App.4th at pp. 656-658 [a gang expert may testify regarding the motivation for a crime and whether it was committed to benefit or promote a gang]; *People v. Gonzalez*, *supra*, 126 Cal.App.4th at p. 1550 [same]; *People v. Zepeda*, *supra*, 87 Cal.App.4th at pp. 1208-1209; *People v. Valdez, supra,* 58 Cal.App.4th at pp. 503–504 [expert opinion concerning whether the defendant acted for the benefit of several gangs was admissible].) Brown is correct that in the instant case, the expert's testimony was not offered in response to a hypothetical

question. Any error in the form of the question, however, appears inconsequential. While use of a hypothetical question would have been the proper method to elicit the testimony, courts have sometimes held similar testimony admissible even when questions were not asked hypothetically. (See, e.g., *People v. Valdez, supra,* 58 Cal.App.4th at pp. 503-504.) Certainly, the question asked of Thrash *could* have been easily posed as a hypothetical, and would have placed essentially the same information before jurors. We cannot conceive that the result would have been more favorable to Brown had Thrash's testimony been given in response to a hypothetical question. Unlike in *People v. Killebrew, supra,* 103 Cal.App.4th 644, Thrash's testimony that the crimes were committed for the gang's benefit did not reflect on Brown's subjective intent or his knowledge. We discern no reversible error.

5. *There was no prejudicial prosecutorial misconduct.*

Brown next asserts reversal is required because the prosecutor committed prejudicial misconduct during argument by misstating the law, vouching for a witness, and engaging in inflammatory rhetoric. We disagree.

"Under California law, a prosecutor commits reversible misconduct if he or she makes use of 'deceptive or reprehensible methods' when attempting to persuade either the trial court or the jury, and when it is reasonably probable that without such misconduct, an outcome more favorable to the defendant would have resulted. [Citation.] Under the federal Constitution, conduct by a prosecutor that does not result in the denial of the defendant's specific constitutional rights–such as a comment upon the defendant's invocation of the right to remain silent–but is otherwise worthy of condemnation, is not a constitutional violation unless the challenged action ' "so infected the trial with unfairness as to make the resulting conviction a denial of due process." ' " (*People v. Rundle* (2008) 43 Cal.4th 76, 157, disapproved on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22; *People v. Lopez* (2008) 42 Cal.4th 960, 965-966.)

a. *Purported misstatement of the law.*

Brown argues the prosecutor misstated the law in the following italicized portions of her argument:

"The next allegation you have applies to counts 1, 2 and 3. Because that intent in shooting was gang motivated. *Shooting of the bus is the general intent crime. He intentionally did an act which could have caused great bodily injury or injury to the people on the bus.* His intent in shooting that gun was to benefit the Rolling 20's. We don't have to prove he was a member of the gang. The jury instruction tells you it must be for the benefit of, at the direction of, or in association with a criminal street gang. Desmond and Ronald know the defendant as an admitted Rolling 20's gang member." (Italics added.)

"[Brown] says he has a problem with Ronald Walker. He claims that Ronald Walker has threatened him in the past. Maybe he has. *It doesn't matter*. That's his motivation. Little Dave has motivation. The defendant has motivation. This is a rival, and *it benefits Rolling 20's*." (Italics added.)

Brown's claim of prosecutorial misconduct is waived because it was not raised below. "To preserve a claim of prosecutorial misconduct for appeal, a criminal defendant must make a timely objection, make known the basis of his objection, and ask the trial court to admonish the jury[,]" or forfeit the claim on appeal. (*People v. Brown* (2003) 31 Cal.4th 518, 553; *People v. Rundle, supra*, 43 Cal.4th at p. 157; *People v. Adanandus* (2007) 157 Cal.App.4th 496, 512.) Here, because Brown did not timely object and request a curative admonition, and has not shown either of those actions would have been futile, he has forfeited his claim.

Because Brown asserts his counsel was ineffective for failing to object, we address the merits of his claim. Brown posits that the prosecutor misrepresented to the jury the mental state required to support a true finding on the gang enhancement allegation. According to Brown, the prosecutor "inserted the *general* intent element relevant to the assault charges against the bus passengers in the midst" of her discussion of the gang allegations, with the sole purpose to confuse the jury and "embed a lesser mental state into their minds." Later, the prosecutor "closed the deal by telling the jury that it was irrelevant whether appellant had some prior beef with the victim, because here the crime benefited the gang and as such" the gang enhancement should be found true.

Brown is, of course, correct that a prosecutor commits misconduct by misstating the law. (*People v. Gray* (2005) 37 Cal.4th 168, 217; *People v. Boyette* (2002) 29 Cal.4th 381, 435; *People v. Williams* (2009) 170 Cal.App.4th 587, 635.) However, our review of the prosecutor's argument in its entirely convinces us that Brown's contention misses the mark. The prosecutor began her argument by discussing the evidence supporting the assault charges and the general intent requirement, moved to a lengthy discussion of the elements of the attempted murder charges and the evidence in support thereof, and then turned the jury's attention to the various firearm allegations and the gang enhancement. At that point, she made the challenged statements. The prosecutor did not misstate the law, nor did she explicitly or implicitly state that the general intent requirement applied to the gang enhancement. It is clear that, whether the prosecutor was attempting to differentiate the assault charges from the gang enhancement, or suffered a brief moment of disorganization, her comment was not intended to mislead the jury as Brown suggests.

Moreover, the trial court's instructions dispelled any possible harm. The court instructed that the jury "must apply the law [as] I state [it] to you, . . . If anything concerning the law said by the attorneys in their arguments or at any other time during the trial conflicts with my instructions on the law, you must follow my instructions." "In the absence of evidence to the contrary, we presume the jury understood and followed the court's instructions." (*People v. Williams, supra,* 170 Cal.App.4th at p. 635; *People v. Sanchez* (2001) 26 Cal.4th 834, 852.)

We also discern no misconduct in the prosecutor's statements, "It doesn't matter" and that the shooting benefited the Rolling 20's gang. In context, the prosecutor was simply arguing that it did not matter whether Brown had a prior dispute with Walker, because in any event, Brown's actions benefited the gang. This was a fair comment on the evidence and not a misstatement of law.

b. *Purported vouching and inflammatory argument.*

Next, Brown asserts that the following italicized portions of the prosecutor's argument amounted to improper vouching for a witness and inflammatory rhetoric. "Mr. Lucas had to go to a quiet place before he felt comfortable. He didn't want to be

here in court testifying. You could tell because he gave a very [detailed] statement consistent with all the other witnesses when he was in private in a safer secure place and identified the defendant. But when faced in court with somebody he knows was running down the street doing a gang shooting, *I don't know if I would have the courage to do it.* It took a lot of courage to just testify. And Ronald Walker admitted to you that he was willing because of fear of retaliation to his family that he was willing to say the defendant wasn't the shooter. That's how much respect and fear Rolling 20's generates. *And by committing these types of crimes, that fear increases and may gain stature in the gang community here in the City of Long Beach.*" (Italics added.)

"[I]mproper vouching for the strength of the prosecution's case ' "involves an attempt to bolster a witness by reference to facts outside the record." ' [Citation.] Thus, it is misconduct for prosecutors to vouch for the strength of their cases by invoking their personal prestige, reputation, or depth of experience, or the prestige or reputation of their office, in support of it. [Citations.] Specifically, a prosecutor's reference to his or her own experience, comparing a defendant's case negatively to others the prosecutor knows about or has tried, is improper. [Citation.] Nor may prosecutors offer their personal opinions when they are based solely on their experience or on other facts outside the record. [Citations.]" (*People v. Huggins* (2006) 38 Cal.4th 175, 206-207; *People v. Farnam* (2002) 28 Cal.4th 107, 200; *People v. Williams* (1997) 16 Cal.4th 153, 257.) However, a prosecutor has wide latitude during argument so long as the argument is a fair comment on the evidence, which includes reasonable inferences or deductions drawn therefrom. (*People v. Bonilla* (2007) 41 Cal.4th 313, 336-337.)

As with his first contention regarding prosecutorial misconduct, Brown has forfeited his claim because he did not object and request a curative admonition below. (*People v. Brown, supra*, 31 Cal.4th at p. 553.) Again, because he contends his counsel rendered ineffective assistance by failing to object, we address the merits of his contention.

The bulk of the challenged argument was nonobjectionable. The comment that "by committing these types of crimes," the Rolling 20's increase fear in the community

and gain stature in the gang community, was a fair comment on the evidence rather than improper rhetoric. As noted *ante*, Detective Thrash had testified that gang members rise in stature within the gang "[b]y their acts. And consequently, the more violent the act is . . . , then the more intimidation and fear factor that individual will put into . . . members of rival gangs, as well as members of the community." That, in turn, benefits the entire gang because of "the fear and intimidation that now that whole gang would have."

Likewise, the prosecutor's argument that witness Lucas was afraid to testify was a proper comment on the evidence. An officer had testified he interviewed Lucas soon after the shooting; Lucas was cooperative but nervous about talking to police; Lucas requested that the officer take him somewhere "where there weren't so many eyes" because "there were a lot of gang members in the area, and a lot of people knew him. And it didn't look good for him to talk to the police." The prosecutor did not invoke her personal prestige or the prestige of her office, nor did she suggest evidence available to her, but not before the jury, corroborated Lucas's testimony. (See *People v. Bonilla, supra,* 41 Cal.4th at pp. 336-337.) This portion of the argument was proper.

As the People concede, the prosecutor's comment that she did not know whether she would have had the courage to testify was improper, in that it expressed her personal opinion. However, this comment did not purport to vouch for Lucas's veracity or suggest the prosecutor was privy to evidence not before the jury. The comment was so brief and fleeting that it simply did not constitute either the type of egregious conduct that so infects a trial as to render it unfair under the federal Constitution, or a deceptive or reprehensible method under the state Constitution. Moreover, as we have noted, the trial court's instructions dispelled any possible harm. (*People v. Williams, supra,* 170 Cal.App.4th at p. 635.) No reversible error is apparent.

6. *Cumulative error.*

Brown contends that the cumulative effect of the purported errors undermined the fundamental fairness of the trial. As we have " 'either rejected on the merits defendant's claims of error or have found any assumed errors to be nonprejudicial,' " we reach the

same conclusion with respect to the cumulative effect of any purported errors. (*People v. Cole* (2004) 33 Cal.4th 1158, 1235-1236.)

7. *Correction of sentencing and clerical errors.*

The People request the abstract of judgment be amended to correct several clerical errors and a minor sentencing error.

a. *Clerical error.*

Prior to trial, various counts were dismissed and, consequently, the counts originally numbered 7, 8, and 10 were renumbered by interlineations of the information as counts 4, 5, and 6. The counts were correctly renumbered on the verdict forms, and the trial court sentenced appellant accordingly. However, as a result of clerical error, the abstract of judgment fails to reflect the amended numbering. Additionally, the People point out that the abstract reflects imposition of a 15-years to life term, but paragraph 8 of the abstract fails to reference that this term was imposed pursuant to section 186.22, subdivision (b)(1)(B).

Clerical errors may be corrected by this court on appeal. We order the abstract of judgment renumbered to reflect the counts as amended, and to reflect that the 15-years-to-life term was imposed pursuant to section 186.22, subdivision (b)(1)(B). (*People v. Mitchell* (2001) 26 Cal.4th 181, 185; *People v. Garcia* (2008) 162 Cal.App.4th 18, 24.)

b. *Four court security fees should have been imposed.*

At sentencing the trial court imposed one $20 court security fee. The People assert that because Brown was convicted of four crimes, the court should have imposed four $20 assessments. The People are correct. Section 1465.8, subdivision (a)(1) provides that, "[t]o ensure and maintain adequate funding for court security, a fee of twenty dollars ($20) shall be imposed *on every conviction for a criminal offense . . . .*" (Italics added.) (*People v. Wallace* (2004) 120 Cal.App.4th 867, 871.) "[S]ection 1465.8 unambiguously requires a fee to be imposed for each of defendant's convictions. Under this statute, a court security fee attaches to 'every conviction for a criminal offense.' " (*People v. Schoeb* (2005) 132 Cal.App.4th 861, 865.) Because Brown was convicted of four offenses, four $20 fees must be imposed, for a total of $80. (*Id.* at p. 866.)

DISPOSITION

The trial court is directed to modify the abstract of judgment to reflect the renumbered counts as amended and that the 15-year-to-life term was imposed pursuant to section 186.22, subdivision (b)(1)(B), and to impose a total of four $20 fees (for a total of $80) on defendant, pursuant to section 1465.8. The clerk of the superior court is ordered to forward the amended abstract of judgment to the Department of Corrections. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.